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8 IN THE UNITED STATES DISTRICT COURT
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10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 GUY STOWERS,
15 Defendant.
16

CASE NO. 1:22-CR-00231 ADA-BAM

STIPULATION CONTINUING STATUS
CONFERENCE AND REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; FINDINGS AND ORDER

DATE: December 14, 2022

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

17 This case is set for a status conference on November 9, 2022 in front of the Honorable Barbara A.
18 McAuliffe, U.S. Magistrate Court Judge. The parties stipulate and request to continue the status
19 conference to December 14, 2022 at 1:00 p.m.
20

21 On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the
22 courthouse in June 2021, recognized the continued public health emergency, continued to authorize
23 video or teleconference court appearances in various cases, and noted the court's continued ability under
24 the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and
25 other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652,
26 which "authorized the use of videoconference and teleconference technology in certain criminal
27 proceedings under the in the Eastern District of California." This and previous General Orders highlight
28 and were entered to address public health concerns related to COVID-19. Pursuant to F.R.Cr.P. 5.1(c)
and (d), a preliminary hearing must be held "no later than 14 days after initial appearance if the

1 defendant is in custody,” unless the defendant consents and there is a “showing of good cause”, or if the
 2 defendant does not consent and there is a “showing that extraordinary circumstances exist and justice
 3 requires the delay.” Here, the defendant consents and there is good cause.

4 Although the General Orders address the district-wide health concern, the Supreme Court has
 5 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 6 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 7 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 8 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 9 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 10 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 11 or in writing”).

12 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 13 and inexcusable—General Orders 611, 612, 617, 631 and 652 require specific supplementation. Ends-
 14 of-justice continuances are excludable only if “the judge granted such continuance on the basis of his
 15 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 16 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 17 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 18 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 19 and the defendant in a speedy trial.” *Id.*

20 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 21 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 22 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 23 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 24 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 25 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 26 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 27 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 28 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. Defense counsel needs additional time to review discovery, ascertain whether further investigation is needed and pursue it if so, and to engage in discussions with the government regarding any potential resolution of the case, motion schedule if warranted, or trial setting. Since the last time the parties requested a continuance, the parties have engaged in discussions regarding reaching a plea agreement and have been negotiating changes in the proposed agreement.

2. By this stipulation, defendant now move to continue the November 9, 2022 status conference to December 28, 2022 and to exclude time from November 9, 2022 to December 28, 2022 under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports, videos, photos, and related documents in electronic form. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) The government does not object to the continuance.

c) In addition to the public health concerns cited by the General Orders and
ations of judicial emergency, and presented by the evolving COVID-19 pandemic, a
f-justice delay is particularly apt in this case because:

¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

- Defendant's ability to prepare for trial or a plea has been inhibited by the public health emergency;

- Defendant needs additional time to review discovery, and conduct additional investigation; and

d) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, , within which trial must commence, the time period of November 9, 2022 to December 28 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code because it results from a continuance granted by the Court at defendant's request on the basis Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

[Remainder of page intentionally left blank.]

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: October 26, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ KIMBERLY A. SANCHEZ
KIMBERLY A. SANCHEZ
Assistant United States Attorney

Dated: October 26, 2022

/s/ MAI SHAWWA
Attorney for Defendant

ORDER

IT IS SO ORDERED that the status conference is continued from November 9, 2022, to **December 14, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: **October 26, 2022**

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE